86R14912 JG-D

By:  Johnson of Harris, Allen, Miller, Wu, H.B. No. 363

     Sherman, Sr., et al.

Substitute the following for H.B. No. 363:

By:  Allen C.S.H.B. No. 363

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the office of independent oversight ombudsman for the Texas Department of Criminal Justice.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subtitle G, Title 4, Government Code, is amended by adding Chapter 512 to read as follows:

CHAPTER 512. OFFICE OF INDEPENDENT OVERSIGHT OMBUDSMAN FOR TEXAS DEPARTMENT OF CRIMINAL JUSTICE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 512.001.  DEFINITIONS. In this chapter:

(1)  "Facility" means a facility operated by or under contract with the department that is used primarily for the confinement of offenders.

(2)  "Offender" means an inmate or state jail defendant confined in a facility.

(3)  "Office" means the office of independent oversight ombudsman.

(4)  "Ombudsman" means the individual appointed under this chapter as ombudsman for the office.

Sec. 512.002.  ESTABLISHMENT; PURPOSE. The office is a state agency established for the purpose of monitoring the conditions of confinement and treatment of offenders, investigating, evaluating, and securing the rights of offenders, and assisting the department in improving its operations. The office is also responsible for conducting in-depth reviews and analyses of data, determining long-term needs, identifying critical issues facing the department and corresponding solutions to those issues, investigating significant group disturbances and critical incidents, and assessing the efficacy of existing programs.

Sec. 512.003.  INDEPENDENCE. The ombudsman acts independently of the department and the board in the performance of the ombudsman's powers and duties under this chapter.

Sec. 512.004.  ADMINISTRATIVE ATTACHMENT; SUPPORT; BUDGET. (a) The office is administratively attached to the Commission on Jail Standards.

(b)  The Commission on Jail Standards shall provide office space and administrative support services, including human resources, accounting, purchasing, payroll, and information technology services, to the office as necessary to carry out the purposes of this chapter.

(c)  The office, in accordance with the rules and procedures of the Legislative Budget Board, shall prepare, approve, and submit a legislative appropriations request that is used to develop the office's budget structure. The office shall maintain the legislative appropriations request and budget structure separately from those of the Commission on Jail Standards and the department.

SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

Sec. 512.051.  APPOINTMENT OF OMBUDSMAN. (a) The governor shall appoint, with the advice and consent of the senate, a person to serve as ombudsman from a list of persons recommended by the chair of each standing committee of the legislature having primary jurisdiction over the department.

(b)  The ombudsman serves a four-year term and may be removed by the governor only for good cause.

(c)  A person may not serve as ombudsman for more than two terms.

Sec. 512.052.  ASSISTANTS. The ombudsman may appoint assistants to perform, under the direction of the ombudsman, the same duties and to exercise the same powers as the ombudsman.

Sec. 512.053.  CONFLICT OF INTEREST. (a) A person may not serve as ombudsman or as an assistant ombudsman if the person or the person's spouse:

(1)  is employed by or participates in the management of a business entity or other organization receiving funds from the department or the office or was employed by or participated in the management of such an entity or organization in the five years preceding the date of the person's appointment;

(2)  owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the department or the office;

(3)  uses or receives any amount of tangible goods, services, or funds from the department or the office; or

(4)  is an officer, employee, manager, or paid consultant of the department or was an officer, employee, manager, or paid consultant of the department in the five years preceding the date of the person's appointment.

(b)  A person may not serve as ombudsman or as an assistant ombudsman if the person or the person's spouse is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the department or the office.

(c)  A person may not serve as ombudsman or as an assistant ombudsman if the person or the person's spouse is an officer, employee, manager, or paid consultant of a Texas trade association in the field of criminal or juvenile justice.

(d)  In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 512.054.  REPORT. (a) The ombudsman shall prepare and submit to the governor, the lieutenant governor, the state auditor, and each member of the legislature:

(1)  periodic reports that evaluate systemic issues affecting the department and any current issues at individual facilities; and

(2)  an annual report that is both aggregated and disaggregated by individual facility and describes:

(A)  the work of the ombudsman and office;

(B)  the results of any review or investigation undertaken by the ombudsman, including any review or investigation of services contracted by the department; and

(C)  any recommendations that the ombudsman has regarding:

(i)  the duties of the ombudsman; or

(ii)  the operations of the department.

(b)  The ombudsman shall immediately report to the executive director or the executive director's designee, the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the office of the inspector general of the department any particularly serious or flagrant:

(1)  confirmed case of abuse or injury of an offender;

(2)  problem concerning the administration of a department program or operation;

(3)  problem concerning the delivery of services in a facility; or

(4)  interference by the department with an investigation conducted by the office.

(c)  In response to any recommendation made by the ombudsman in a report submitted under this section, the department shall:

(1)  develop a corrective action plan to specifically address the recommendation; or

(2)  submit to the ombudsman a written objection to the recommendation that includes the reasons for the objection.

(d)  The ombudsman shall publish on the office's Internet website each:

(1)  report submitted under this section;

(2)  corrective action plan developed under Subsection (c)(1); and

(3)  objection submitted under Subsection (c)(2).

Sec. 512.055.  COMMUNICATION AND CONFIDENTIALITY. (a) The department shall establish procedures allowing any offender or facility administrator or employee to communicate with the ombudsman or an assistant ombudsman regarding a power or duty of the ombudsman or office. The communication:

(1)  may be in person, by mail, or by any other means; and

(2)  is confidential and privileged.

(b)  The records of the ombudsman are confidential, except that the ombudsman shall:

(1)  share with the office of the inspector general of the department a communication with an offender that may involve abuse or neglect; and

(2)  disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

(c)  The ombudsman may make public any report relating to an investigation after the investigation is complete, except that the names of all offenders, family members, and employees remain confidential and must be redacted before the report is made public.

(d)  The name, address, and other personally identifiable information of a person who files a complaint with the office, information generated by the office in the course of an investigation, and confidential records obtained by the office are confidential and not subject to disclosure under Chapter 552, except that the information and records, other than confidential information and records concerning a pending law enforcement investigation or criminal action, may be disclosed to an appropriate person if the office determines that disclosure is:

(1)  in the public interest;

(2)  necessary to enable the office or ombudsman to perform a duty under this chapter; or

(3)  necessary to identify, prevent, or treat physical or sexual assault or neglect of an offender.

Sec. 512.056.  PROMOTION OF AWARENESS. The ombudsman shall promote awareness among the department, the public, and offenders regarding:

(1)  how the office may be contacted;

(2)  the purpose of the office; and

(3)  the services the office provides.

Sec. 512.057.  RULEMAKING AUTHORITY. The office by rule shall establish policies and procedures for the operations of the office.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 512.101.  POWERS AND DUTIES. (a) The ombudsman shall:

(1)  review the procedures established by the department and evaluate the delivery of services to offenders to identify alternate procedures or services that would optimize the use of state resources while ensuring that the rights of offenders are fully observed;

(2)  routinely review grievances and grievance logs to address any pattern of actions of the department affecting the treatment of offenders;

(3)  conduct investigations of complaints submitted by offenders, family members, and employees and review criminal investigations conducted by the office of the inspector general of the department if the ombudsman determines that a pattern of complaints exists suggesting that an issue affects more than one offender;

(4)  review or inspect periodically the facilities and procedures of any institution or residence in which an offender has been placed by the department, whether public or private, to ensure that the rights of offenders are fully observed;

(5)  conduct immediate investigations of a significant group disturbance or other critical incident to determine whether a change in department policy or practice is necessary;

(6)  provide assistance to an offender or family member who the ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the offender;

(7)  review court orders as necessary to fulfill the ombudsman's duties;

(8)  recommend changes in any procedure relating to the treatment of offenders;

(9)  make appropriate referrals under any of the powers and duties listed in this subsection; and

(10)  supervise an assistant ombudsman in the performance of the assistant ombudsman's duties.

(b)  The ombudsman may inform persons who are interested in an offender's welfare of the rights of the offender.

(c)  To determine if an offender's rights have been violated, the ombudsman may, in any matter that does not involve alleged criminal behavior, contact or consult with an administrator, an employee, a family member, an expert, another offender, or any other individual in the course of the ombudsman's investigation or to secure information.

(d)  Notwithstanding any other provision of this chapter, the ombudsman may not investigate alleged criminal behavior, except that the ombudsman may review, in accordance with Subsection (a)(3), a criminal investigation conducted by the office of the inspector general of the department to ensure that the investigation was conducted in an accurate, unbiased, and thorough manner.

(e)  An inmate's complaint to the office and any investigation conducted by the ombudsman under this chapter are independent of the inmate grievance system developed under Section 501.008 and do not affect the procedures, rights, or duties established under that system or constitute a grievance under that system.

Sec. 512.102.  RETALIATION PROHIBITED. The department may not:

(1)  discharge, discipline, or in any manner discriminate or retaliate against an employee who makes a good faith complaint to the office or cooperates with an investigation under this chapter; or

(2)  discipline or in any manner discriminate or retaliate against an offender who complains to or communicates or cooperates with the office in the course of the office carrying out its duties.

Sec. 512.103.  TRAINING. The ombudsman may attend training sessions for correctional officers or participate in other appropriate professional training.

SUBCHAPTER D. ACCESS TO INFORMATION, FACILITIES, AND PERSONNEL

Sec. 512.151.  ACCESS TO INFORMATION OF CERTAIN GOVERNMENTAL ENTITIES. The department shall allow the ombudsman access to the department's records relating to an offender or investigation. In allowing access to records under this section, the department shall fully cooperate and collaborate with the office in a prompt manner in order for the office to carry out its duties and improve facility operations and conditions.

Sec. 512.152.  ACCESS TO INFORMATION OF PRIVATE ENTITIES. The ombudsman may subpoena the records of a private entity that relate to a complaint the ombudsman is investigating.

Sec. 512.153.  ACCESS TO FACILITIES, RECORDS, AND PERSONNEL. (a) The office may inspect or review without notice any part of a facility or any facility operation, policy, procedure, record, or log relating to:

(1)  a condition of confinement;

(2)  offender discipline and the use of force against offenders;

(3)  an incident of assault or sexual assault;

(4)  death of or serious bodily injury to an offender;

(5)  the provision of health care, including mental health care;

(6)  the offender grievance process;

(7)  a telephone, mail, or visitation policy;

(8)  a rehabilitation, reentry, or reintegration program;

(9)  employee recruitment, training, supervision, or discipline; and

(10)  staffing levels and staffing deployment.

(b)  The ombudsman shall coordinate with the office of the inspector general of the department to develop policies and procedures that ensure an inspection or review under Subsection (a) does not interfere with a criminal investigation being conducted by the office of the inspector general.

(c)  In conducting an investigation, the office may:

(1)  interview offenders and facility administrators or employees;

(2)  hold public hearings; and

(3)  issue a subpoena to compel the attendance of a relevant witness or the production of relevant records or documents.

SUBCHAPTER E. ADVISORY BOARD

Sec. 512.201.  CREATION AND COMPOSITION OF ADVISORY BOARD. (a) An advisory board is created to advise the office in carrying out the office's duties under this chapter.

(b)  The advisory board is composed of the following nine members appointed by the governor:

(1)  one family member of an offender or a former offender;

(2)  one health care professional;

(3)  one social worker;

(4)  one person with expertise in administrative or criminal investigations;

(5)  one person with expertise in sexual assault victim advocacy;

(6)  one person with expertise in occupational safety and health;

(7)  one person with expertise in research and data analysis;

(8)  one former offender; and

(9)  one former correctional officer.

(c)  The chair of each standing committee of the legislature having primary jurisdiction over the department and the primary author and sponsor of the legislation enacting this chapter, but only if the author or sponsor continues to be a member of the legislature, may provide the governor with recommendations on any appointment made under Subsection (b).

(d)  Members of the advisory board serve staggered four-year terms.

(e)  A person may not serve as a member of the advisory board for more than two terms.

(f)  Chapter 2110 does not apply to the composition or duration of the advisory board.

SECTION 2.  (a) As soon as practicable after the effective date of this Act, the governor shall appoint an initial ombudsman under Chapter 512, Government Code, as added by this Act, to a term expiring February 1, 2023.

(b)  Not later than December 1, 2019, the governor shall appoint the members of the advisory board under Section 512.201, Government Code, as added by this Act.

SECTION 3.  This Act takes effect September 1, 2019.